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## State v. Sloan Respondent's Brief Dckt. 43280

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43280
Plaintiff-Respondent,	)	
	)	Bonneville County Case No.
v.	)	CR-2014-6895
	)	
DELILA BELL SLOAN,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issues

Has Sloan failed to establish that the district court abused its discretion by imposing a unified sentence of seven years, with three years fixed, upon her guilty plea to possession of methamphetamine with intent to deliver; by relinquishing jurisdiction; or by denying her Rule 35 motion for a reduction of sentence?

Sloan Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Sloan pled guilty to possession of methamphetamine with intent to deliver and the district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.71-72.) Following the period of retained jurisdiction, the

district court relinquished jurisdiction. (R., p.73.) Sloan filed a notice of appeal timely from the district court's order relinquishing jurisdiction. (R., pp.80-83.) She also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.74-75, 79.)

Sloan asserts her sentence is excessive in light of her substance abuse, mental health issues, and acceptance of responsibility. (Appellant's brief, pp.4-6.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum sentence for possession of methamphetamine with intent to deliver is life in prison. I.C. § 37-2732(a)(1)(A). The district court imposed a unified sentence of seven years, with three years fixed, which falls well within the statutory

guidelines. (R., pp.71-72.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Sloan's sentence. (10/29/14 Tr., p.9, L.15 – p.11, L.9.) The state submits that Sloan has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Sloan next asserts that the district court abused its discretion by relinquishing jurisdiction, in light of her "limited successes" while on her rider, her "recognition of a problem," and her purported willingness to make changes. (Appellant's brief, pp.6-8.) "Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

Sloan has not demonstrated that she was an appropriate candidate for probation. She performed poorly in the retained jurisdiction program, incurring several verbal warnings and three DOR's. (APSI, pp.2-3.<sup>1</sup>) She failed to complete her Moral

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<sup>1</sup> APSI page numbers correspond with the page numbers of the electronic file "Addendum to the Presentence Investigation.pdf."

Reconciliation Therapy (MRT) and Responsible Mothering classes and remained a high risk to reoffend. (APSI, pp.2, 4.) The MRT facilitator reported:

Ms. Sloan failed to own up to her behaviors and continued to defend herself stating she was not doing anything wrong. Ms. Sloan never took accountability in group until she was confronted by others. It was determined that Ms. Sloan needed to return to step 1 and revisit the honesty portion of the class. After returning to step 1, she displayed signs of change and began taking accountability in group. Every time she is confronted by the group, she agrees that her behaviors have violated the facility rules and says she will make a new commitment to changing her behavior but her actions are speaking much louder than her words. When processing her behaviors, it became apparent that she can take accountability for some of her actions, but is not always up front about everything. Ms. Sloan was placed on a behavioral contract in one last attempt to get her to correct her behaviors. Ms. Sloan ended up breaking her contract and was ultimately removed from the program. When looking at her past behavior's [sic] Ms. Sloan would ask for help and when confronted, she would minimize everything and not take her feedback to heart.

(APSI, p.4 (emphasis original).)

SBWCC recommended that the district court relinquish jurisdiction “based on [Sloan’s] poor behavior and lack of insight to [sic] her behavior and the effect it has on herself and the community” (APSI, p.1), noting:

Ms. Sloan was a significant disciplinary problem and her efforts in the program did not appear to be sincere, regarding her willingness to change her criminal thinking and behavior. She was manipulative and does not at this time demonstrate the ability to follow probation stipulations and recommendations.

(APSI, p.3). Sloan is not an appropriate candidate for probation, particularly in light of her continued criminal thinking and failure to demonstrate adequate progress in the retained jurisdiction program. Given any reasonable view of the facts, Sloan has failed to establish that the district court abused its discretion by relinquishing jurisdiction.

Finally, Sloan asserts that the district court abused its discretion by denying her Rule 35 motion for a reduction of sentence because, she claims, the classes she took while on her rider “improved her skill set such that [she] would be better able to succeed on probation.” (Appellant’s brief, pp.8-9.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Sloan must “show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Sloan has failed to satisfy her burden.

Sloan provided no new information in support of her Rule 35 motion. (R., pp.74-75; 5/6/15 Tr., p.15, L.3 – p.16, L.14.) She merely pointed out that she had completed some of her rider programming, as was indicated in the APSI. (5/6/15 Tr., p.15, Ls.21-24; APSI, p.2.) This was not “new” information, as the court had the APSI before it at the time that it relinquished jurisdiction. Because Sloan presented no new evidence in support of her Rule 35 motion, she failed to demonstrate in the motion that her sentence was excessive. Having failed to make such a showing, she has failed to establish any basis for reversal of the district court’s order denying her Rule 35 motion.

Even if this Court addresses the merits of Sloan’s claim, she has still failed to establish an abuse of discretion. At the hearing on Sloan’s Rule 35 motion, the district court articulated its reasons for denying the motion. (5/6/15 Tr., p.19, L.21 – p.21, L.14.) The state submits that Sloan has failed to establish that the district court abused its discretion by denying her Rule 35 motion for a reduction of sentence, for reasons

more fully set forth in the attached excerpt of the Rule 35 hearing transcript, which the state adopts as its argument on appeal. (Appendix B.)

Conclusion

The state respectfully requests this Court to affirm Sloan's conviction and sentence and the district court's orders relinquishing jurisdiction and denying Sloan's Rule 35 motion for a reduction of sentence.

DATED this 22nd day of March, 2016.

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of March, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A



1 Mr. Davis. I think she does have a substance-abuse  
2 issue. She needs treatment. She needs higher levels of  
3 treatment than she's had in the past. She's had  
4 probations in the past. It doesn't seem like those have  
5 addressed the issues; otherwise, we wouldn't be here.

6 What I think is appropriate is I think a retained  
7 jurisdiction is appropriate, and upon her release that  
8 she complete the problem solving court. I think that  
9 that would satisfy most of the factors, if not all of  
10 the the factors, that this Court looks at in terms of  
11 sentencing.

12 As far as an underlying sentence goes, we would  
13 ask for three fixed, four indeterminate, for a total of  
14 seven.

15 I would leave any other terms to the Court.

16 THE COURT: All right.

17 Well, Ms. Sloan, do you wish to make any  
18 statement on your own behalf or give me any additional  
19 information in mitigation before I impose sentence?

20 THE DEFENDANT: I know I have a bad record for  
21 misuse of drugs and such, that I hadn't stopped and  
22 reared back up since having my son. I know I need help,  
23 and I'm more than willing to proceed with getting that  
24 help.

25 As of support, my son is what I take as my

8

1 support on everything and being away from him makes it  
2 harder. And I just want -- hope -- I want, but I hope  
3 that I get the treatment and the help that I need  
4 regardless of the outcome so --

5 THE COURT: All right. Anything else?

6 THE DEFENDANT: No.

7 THE COURT: Are you fully satisfied with the  
8 representation which Mr. Davis has provided?

9 THE DEFENDANT: Yes.

10 THE COURT: I didn't hear that.

11 THE DEFENDANT: "Yes".

12 THE COURT: Do you know of any legal reason why I  
13 should not sentence you today?

14 THE DEFENDANT: No.

15 THE COURT: Well, Ms. Sloan, I'm concerned here  
16 that this is a very serious crime. This potentially  
17 could land you in prison for the rest of your life. It  
18 is not the first time. You have two prior felonies.  
19 You have a significant prior criminal record which  
20 suggests that you've not responded well in the past.

21 I agree you need treatment. You need help. I  
22 have to take a long view here. I appreciate what you  
23 say about your son, but the best thing that can happen  
24 to your son is to have you sober. And if you're going  
25 to continue to do this kind of stuff, it isn't helping

9

1 him much. So the best thing we can do is try to get you  
2 clean and sober, so that you can deal with him and be a  
3 good mother.

4 The evaluation that has been done suggests that  
5 you need to be -- you need level III treatment, which is  
6 an inpatient level treatment to begin, and that's, I  
7 think, what shaped what the Drug Court recommended. The  
8 two of those in combination should put you under  
9 sufficient structure and give you the assistance that  
10 you need over time to get clean. But none of this  
11 happens without sacrifice, and the problem has been in  
12 the past, you just wanted to go on and continue to deal  
13 with things on your own, and it doesn't work.

14 So based upon your plea of guilty, it is the  
15 judgment of the Court that you are guilty of the crime  
16 of Possession of Methamphetamine with Intent to Deliver.

17 In addition to the Presentence Investigation  
18 Report, I have reviewed the objectives of criminal  
19 punishment adopted by the Idaho Supreme Court.

20 My primary duty under those directions is to  
21 protect society from someone who's dealing drugs, and  
22 I've got to take that seriously, and if I have to put  
23 you in prison for a long time to do that, I will.

24 On the other hand, I must see to your  
25 rehabilitation if I can and try to deter you from doing

10

1 this. And I must impose some element of punishment.

2 I have also reviewed and considered the criteria  
3 set forth in Idaho Code section 19-2521 relative to  
4 whether I place you on probation or send you to prison.

5 Based upon all of the circumstances of the case,  
6 it is the judgment of the Court that you be sentenced to  
7 the custody of the Idaho Board of Corrections for a  
8 minimum period of three and a maximum period of seven  
9 years.

10 I shall impose a fine of \$1000.

11 Any objection to the restitution, Mr. Davis?

12 THE DEFENDANT: No.

13 MR. DAVIS: No, Your Honor.

14 THE COURT: Restitution in the amount of \$654.41.

15 I shall require that you reimburse the county  
16 \$500 for the services of the public defender.

17 Court costs will be \$205.50 and \$75 to the  
18 Victims Relief Fund.

19 You will provide a DNA and thumbprint exemplar  
20 and pay the statutory fee for that.

21 You will pay up to a \$100 for the preparation of  
22 the presentence report to the Department of Correction.

23 I shall retain jurisdiction in this the case for  
24 a period of up to 365 days, during which time I shall  
25 direct that you be -- I shall recommend that you be

11

## APPENDIX B

1 this Court reconsider the underlying sentence. This  
2 Court gave her a three-plus-four for a total of seven.  
3 She would request that this Court give her a shorter  
4 fixed time allowing her to put her skills to the test in  
5 the community in a shorter time period than the three  
6 years fixed that this Court gave back in October.

7 So this -- Ms. Sloan asks for either/or both of  
8 those things, Your Honor, that the Court give her an  
9 opportunity to succeed on probation, because she does  
10 have some skill sets that have changed from the time  
11 that this Court originally sentenced her, as well as an  
12 opportunity to put her skills into the community a  
13 little quicker than the three years underlying that this  
14 Court imposed back in October.

15 THE COURT: All right. Ms. Shaul.

16 MS. SHAUL: Thank you, Your Honor.

17 At this time we are opposing the request for Rule  
18 35 relief. Your Honor, I would indicate the following:  
19 First of all, I think it's really telling when you look  
20 at what Ms. Sloan is attempting to do now. She's  
21 saying, "Okay. I messed up. I flopped my rider, but  
22 now I'm confronting my behaviors. Now, I'm ready to  
23 take responsibility, and now I will work my program."

24 But I go back, and I look at some of the things  
25 that have happened, and it's specifically looking at

16

1 page 4 of the APSI, I find it really interesting in the  
2 first paragraph, the second -- let's see, about  
3 two-thirds of the way down, the writer of this APSI  
4 says, "When processing her behaviors, it became apparent  
5 that she can take accountability for some of her  
6 actions, but is not always upfront about everything.  
7 Ms. Sloan was placed on a behavioral contract in one  
8 last attempt" -- excuse me, Your Honor. I need to mute  
9 my computer before I get in trouble. Thank you.

10 "She was placed on a behavioral contract in one  
11 last attempt to get her to correct her behaviors. She  
12 ended up breaking her contract and was ultimately  
13 removed from the program. When looking at her past  
14 behaviors, Ms. Sloan would ask for help and when  
15 confronted, minimize everything and not take her  
16 feedback to heart."

17 I think that's interesting because if you go back  
18 and you look at the pattern on this case -- I'm looking  
19 at my sentencing memo from October 23rd -- we had a plea  
20 agreement in this case, and the plea agreement was we  
21 would recommend probation, and the defendant was  
22 supposed to apply to the problem solving court in good  
23 faith, and if she was accepted, we would recommend  
24 probation.

25 Well, when she was staffed, it turns out that she

17

1 was a Level III Residential Treatment assess, and then  
2 in the meantime, she failed to cooperate with the  
3 presentence process, she got arrested on a bench  
4 warrant, and she struggled to comply with Pretrial  
5 Services. And I'm not positive -- I'm sorry. That's  
6 wrong. There wasn't anything about Pretrial Services.

7 What I find interesting is that she has a very  
8 long history of misdemeanors, most of which are  
9 substance-abuse related, and she also had two prior  
10 felony possession convictions out of Arizona in 2008.

11 So what we have is this long pattern of "I'm not  
12 going to do what I'm told. I'll do a little bit of what  
13 I'm told. When I get caught, then I'll say, 'I'm going  
14 to do what I'm told.'" And so at this point, I would  
15 also note, Your Honor, I don't think Ms. Ball, with that  
16 kind of attitude, could ever possibly be successful in  
17 the community. I think she needs to stay right where  
18 she's at, work on the programs that she has afforded to  
19 her while in custody.

20 She was only accepted into Felony Drug Court if  
21 she could successfully complete her CAPP program, but  
22 she didn't, and she knew that she had this hanging over  
23 her head and didn't take it seriously. And now she's  
24 asking you to reconsider what is an appropriate  
25 sentence, especially given her prior felony convictions

18

1 for drug possessions in 2008. The tail end of that  
2 sentence -- the parameters of the sentence were  
3 appropriate, the three plus four for a total of seven.

4 More importantly, she's shown that she's only  
5 going to take this seriously as long as there's a heavy  
6 weight hanging over her head, and even then, it's more  
7 lip service, "Now, I'll take it seriously."

8 So we would ask the Court to deny the request for  
9 Rule 35 relief on both levels. First of all, on  
10 allowing her -- for the Court to allow her to return to  
11 the community, because she didn't meet her requirements  
12 with you. She failed the CAPP Rider Program through her  
13 own failure to take it seriously and apply herself  
14 seriously, and also the request to reduce the  
15 sentence -- the sentence parameters as they now stand.  
16 They are appropriate given her prior criminal history.

17 Thank you.

18 THE COURT: All right. Mr. Davis?

19 MR. DAVIS: Your Honor, I don't have anything  
20 further to argue in regards to this matter.

21 THE COURT: Well, I've reviewed the -- gone back  
22 and reviewed the presentence report. I've reviewed the  
23 file with regard to our -- the method by which we got to  
24 sentencing here. I would note that Ms. Sloan struggled  
25 with a number of things, including failure to comply

19

1 adequately with the presentence investigator, and I had  
2 to put her back in jail and reschedule the sentencing.

3 She has a significant prior criminal record with  
4 two prior felonies before this one. And the -- much of  
5 what's said in the presentence report is almost  
6 identical in its tone to what we see in the report from  
7 the Retained Jurisdiction Program.

8 I'm particularly concerned with the comments that  
9 are made with regard to the disciplinary issues where it  
10 says "She was a significant disciplinary problem, and  
11 her efforts in the program did not appear to be sincere  
12 regarding her willingness to change in her criminal  
13 thinking and behavior. She was manipulative and does  
14 not at this time demonstrate the ability to follow  
15 probation stipulations and recommendations."

16 It seems to me that she wants to take things on  
17 her own terms and do a little bit if she wants to, but  
18 if she doesn't want to do it, she doesn't do it. Same  
19 problem I had with her. And until she gets past that  
20 and decides that she's going to comply with community  
21 standards and submit herself to the rehabilitative  
22 efforts that we're willing to put into her, she's got to  
23 be where she's not going to continue to do this stuff.

24 I don't see any change. Even though she  
25 completed a couple of the programs at the retained

20

1 jurisdiction, she didn't ever finish MRT. She has hit  
2 the wall, and they requested that I terminate her from  
3 that program, and I did.

4 And I think it would be a disservice to others  
5 who make the effort to comply and to learn from the  
6 program to now reduce her sentence as a result of her  
7 misbehavior.

8 The sentence was an appropriate sentence given  
9 her prior history, and I think it's just time for her  
10 now to reassess her life and decide whether she really  
11 wants to be in prison the rest of her life or not.

12 So based upon those considerations, I'm going to  
13 deny motion. I hope she gets a hold of things where she  
14 is and can make a better effort.

15 Anything else at this time?

16 MR. DAVIS: Nothing further in this case this  
17 morning, Your Honor.

18 THE COURT: All right. Thank you.  
19 (Proceedings concluded.)  
20  
21  
22  
23  
24  
25

21